

August 24, 2005

**LETTER OPINION**  
**ORIGINAL TO CLERK OF THE COURT**

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RE: Clarke v. Old Dominion  
Civil Action No. 03-6092 (HAA)

Dear Counsel:

This matter is presently before the Court on a motion seeking summary judgment dismissing the complaint.

A closer examination of the voluminous papers submitted by the parties, however, reveals that the motion is really the latest episode in a discovery dispute that has persisted for a number of months.

It is apparent that plaintiff prepared numerous taped recordings of his interactions with the defendants and numerous handwritten transcripts of those recordings. He also relied at his deposition on a briefcase full of documents.

In January, 2005, I ordered plaintiff to supply copies of the recordings. Instead, he has evidently supplied enhanced or edited versions and he has failed to produce the documents he relied upon at his deposition and the handwritten transcripts of the tapes he made.

Although the defendants are understandably frustrated at plaintiff's recalcitrance, the law does not permit the extreme

sanction of dismissal at this juncture. The Court must attempt other lesser sanctions in order to compel plaintiff's compliance.

Accordingly, I direct plaintiff to supply all tapes, transcripts and other materials made by plaintiff or relied upon by him during his deposition within 15 days of the date of this order to defense counsel. I also award counsel fees to defense counsel in an amount to be determined after submission by counsel of an affidavit as to the amount sought within 10 days. Plaintiff may object only as to the amount sought within 5 days thereafter.

If this order is not complied with, defense may renew its dismissal motion.

As to the unanswered requests to admit served by defendants in March, 2005, those requests are deemed admitted by the language of Federal Rule of Civil Procedure 36.

Very truly yours,

S/ G. Donald Haneke  
United States Magistrate Judge

GDH:rl  
cc: Hon. Harold A. Ackerman  
United States District Judge

